

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition for )  
Penalty Relief of: )**

**ROSELIE ANN BAUMAN, M.D. )**

**Case No. 8002014002639**

**Physician's and Surgeon's )  
Certificate No. A 67234 )**

**Petitioner )**

**DECISION AND ORDER**

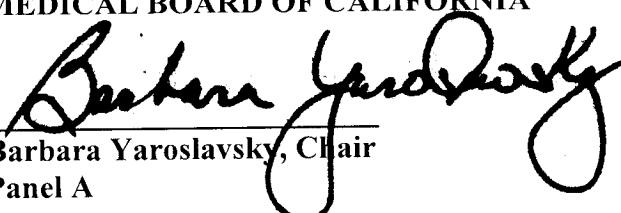
**The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on August 22, 2014.**

**IT IS SO ORDERED July 25, 2014.**

**MEDICAL BOARD OF CALIFORNIA**

**By:**

  
**Barbara Yaroslavsky, Chair  
Panel A**

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Penalty  
Relief of:

ROSELIE ANN BAUMAN, M.D.,

Petitioner.

Case No. 800-2014-002639

OAH No. 2014050879

**PROPOSED DECISION**

On June 24, 2014, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Paul Spackman, Attorney at Law, represented petitioner.

Joseph F. McKenna III, Deputy Attorney General, represented the Attorney General.

The matter was submitted on June 24, 2014.

**FACTUAL FINDINGS**

1. On December 5, 2013, petitioner signed a Petition for Penalty Relief and submitted it to the Medical Board of California (hereafter, "Board"). Petitioner seeks termination of probation.
2. On December 23, 1998, the Board issued license number A 67234 to petitioner.
3. On February 10, 2011, the Board's Executive Director filed Accusation No. 18-2008-192412 against petitioner, alleging three causes for discipline that centered upon petitioner's treatment of X.J., a 39 year old, diabetic, obese pregnant woman. Petitioner saw the patient three times during 2005. The first cause of discipline alleged that petitioner committed gross negligence in four respects: she misdiagnosed X.J.'s viable pregnancy during the period of 20 to 26 weeks of gestation as non-viable; petitioner misinterpreted a cystic structure seen on a vaginal ultrasound for an early gestational sac; petitioner failed to seek a second opinion or refer X.J. to a high risk obstetrician at the second visit despite not

having previously treated such an obese patient; and petitioner prescribed and ordered X.J. to take Cytotec when X.J. was approximately 26 weeks pregnant with a healthy, viable fetus. The second cause for discipline alleged repeated negligent acts and listed the same reasons as the first cause for discipline and added three additional reasons: petitioner performed an inadequate first prenatal examination of the patient including failing to perform an abdominal and pelvic exam, an abdominal ultrasound, Doppler, and a quantitative Beta hCG to evaluate the possible flawed pregnancy that petitioner suspected; petitioner failed to perform a pelvic examination on the patient at any time prior to prescribing Cytotec; and petitioner failed to reconcile the high Beta hCG levels with X.J.'s ultrasound findings. The third cause of discipline alleged petitioner was incompetent for the reasons alleged in the first two causes of discipline.

The Board and petitioner entered into a Stipulated Settlement and Disciplinary Order, in which petitioner did not contest that at an administrative hearing, the Board could establish a *prima facie* case with respect to the charges and allegations contained in the accusation and that she had thereby subjected her license to disciplinary action. The Board and petitioner further agreed that petitioner's license would be revoked, the revocation would be stayed, and petitioner would be placed on probation for three years on terms and conditions. In addition to the Board's standard terms of probation, the disciplinary order provided that petitioner would take additional educational programs of at least 40 hours per year on the subject of ultrasound readings and would take a clinical training program. The Board adopted the Stipulated Settlement and Disciplinary Order on November 30, 2011, and it became effective on December 30, 2011.

4. Petitioner attended Loma Linda University and obtained a Bachelor of Science degree in psychobiology in 1988. She attended the Loma Linda University School of Medicine from 1990 to 1994 after working for two years at the Loma Linda Faculty Medical Group. Petitioner completed an obstetrics and gynecology residence at the University of Hawaii School of Medicine. She became licensed in Hawaii in 1996 and in California in 1998. She became board-certified in OB/GYN in 2001 and her certification remains current.

Petitioner began working for Permanente Medical Group in Fresno in 1999. After three years, she moved to Riverside and joined the Southern California Permanente Medical Group. She is a Fellow of the American College of Obstetrics and Gynecology and a member of the American College of Obstetrics and Gynecology, as well as being a member of the AMA and CMA. Petitioner served on the obstetrics and pediatrics QA, the Kaiser Permanente Leadership Training Program, volunteered for the UCI clinical faculty, and served as an assistant clinical professor at UCSF. She served on a number of other committees and published articles in the field of obstetrics and gynecology.

5. Petitioner wrote in her narrative statement that she was requesting early termination of probation because she had successfully completed all the probationary conditions, including the clinical training program through PACE and the additional educational courses in ultrasound.

Petitioner wrote that she received extensive training at the University of Hawaii in high-risk pregnancies. Since joining Kaiser in 2002, she indicated that she performed 10 to 20 deliveries a month including caesarean sections and 30 to 50 ultrasounds.

Petitioner explained that the case that led to the order of discipline was a complicated one based upon a misdiagnosis when viewed retrospectively. She wrote that after she concluded that the pregnancy was a failed one and she had prescribed Cytotec to medically manage what appeared to be a miscarriage, the patient came to the emergency room where a viable 26-27 week old baby boy was delivered. She reported that the child was doing well. Petitioner wrote that her assessment that the pregnancy was a failed one was incorrect in retrospect but not without support at the time. She noted that the patient was unsure of her dates and did not report any fetal movement, and the initial transvaginal ultrasound showed an early or failed pregnancy. She indicated the second and third ultrasounds showed a blighted ovum with a collapsing gestational sac. Petitioner believed the patient's decreasing BHCGs were consistent with a miscarriage and added that the patient's obesity made palpation of a uterine fundus difficult and a transabdominal ultrasound less sensitive. Petitioner further explained that she performed a pelvic examination and the transvaginal ultrasound showed an empty gestational sac. Petitioner wrote that the patient was offered a second opinion for performance and review of the ultrasound, which she declined, and instead chose to have a repeat ultrasound at the third visit. Petitioner further explained that the patient told her she was certain that she had miscarried and did not report any fetal movement. A third ultrasound showed an empty gestational sac and no growth, and the patient again declined a second opinion. Petitioner indicated they decided to proceed with medical management and to treat the miscarriage with Cytotec. Petitioner summarized her narrative by writing "Despite all the evidence of a miscarriage, in retrospect I obviously misdiagnosed this case." She wrote that bears full responsibility for the misdiagnosis and feels horrible about what occurred. She vowed that she had no intention of letting such a thing happen again.

Petitioner wrote that there have been no other cases in the eight years since this case that resulted in an arbitration award against her, and this was the only case brought against her. She noted that the State of Hawaii brought a disciplinary case against her Hawaii license based upon the same acts. Petitioner indicated that for the Hawaii matter she paid a fine and was placed on probation, with the Hawaii probation to run concurrently with her California probation.

Petitioner wrote in her narrative that she considers herself to be a caring and compassionate physician and she had treated thousands of patients' pregnancies and interpreted thousands of ultrasounds. She added that she had treated numerous obese patients.

Petitioner indicated that she completed the PACE program in June 2012. The program included 40 units of credit within the Department of Reproductive Medicine. Petitioner participated in the Advanced Life Support in Obstetrics course and assisted in the training of other participants.

Petitioner wrote that she complied with the 40-hours per year requirement of additional continuing medical education by attending the World Congress on Ultrasound in Obstetrics and Gynecology in 2011, Hands-On Obstetric Ultrasound Imaging in 2012, and OB/GYN Ultrasound through Advanced Health Education Center in 2013. She noted that on several occasions she helped others in the courses and she has taken some continuing education courses on line as well as continuing to read the literature on the subject. She believes that her ability and judgment in the interpretation of obstetric ultrasounds has become more refined by the courses she has taken, but added that she has virtually exhausted the existing courses available in ultrasound interpretation. She noted that she has obtained more than 180 units of continuing education credits over the last two years.

As a result of this case, petitioner now insists that patients undergo a second confirmatory ultrasound by another obstetrician or other qualified physician when she has a question regarding the interpretation of an ultrasound. She wrote that she is now more conscientious toward patients with a blighted ovum.

Petitioner concluded her narrative by writing that she was truly sorry for what happened and she has attempted to take this difficult situation and make the best of it by using the information gained through this experience to enrich her practice. She reiterated that she had complied and actively engaged in assessment and training recommended by the Board, and she has changed her practice to ensure that a misdiagnosis does not recur.

6. Petitioner submitted a Physician Certificate of Credit showing she completed the PACE program at UCSD. Charles Nager, M.D., administered the program and at petitioner's request, wrote a letter describing petitioner's participation. He described her as an active, well-received participating member of the department. He wrote that her level of knowledge and sophistication in surgery were solid and she was adept at literature research, as shown by a project she completed during the program. He wrote that in general, the faculty thought that petitioner's knowledge and judgment were very good and he did not have any significant reservations about her, despite her seriously misdiagnosing a 26-week pregnancy. Dr. Nager noted that petitioner was remorseful about it.

7. Petitioner submitted the following letters written in support of her petition:

a. Colleen M. Wittenberg, M.D., as assistant area medical director for Kaiser, wrote that she had worked closely with petitioner for 11 years and described petitioner as an excellent physician respected by her peers, staff, and patients. She noted that petitioner's patient satisfaction scores were above average and that petitioner was thoughtful and thorough in the care she provided. She pointed out that petitioner was an assistant clinical professor at UCSF and for six years was a volunteer clinical faculty member at UCI. She indicated that petitioner was co-chair of the OB/GYN Department OB Morbidity and Mortality Quality meetings for 11 years and that petitioner had taken 80 units of credits in ultrasound training. She pointed out petitioner's efforts to increase her skills in high-risk areas. Dr. Wittenberg highly supported the petition.

b. Karin Jones, M.D., Chief of Service OB/GYN, wrote that she has worked with petitioner for 10 years including the last year as her Chief of Service. She described petitioner as an excellent physician who was well liked by her colleagues and patients. She noted that petitioner's patient satisfaction scores were above average and she often received letters of recognition and thanks from her patients. She wrote that petitioner was very conscientious and frequently spent extra time with her patients. She believed petitioner has good clinical skills and was attentive to detail. She indicated petitioner accepted constructive criticism regarding her management of her patients, and this has allowed her to progress to become an excellent physician and partner. Dr. Jones had no reservations in recommending petitioner.

c. Pradip Shad, M.D., is the NICU Medical Director for the Level 3 NICU in Riverside. He has known petitioner since 2002. He wrote that petitioner in the last few years has grown into a mature, humble and confident partner in the medical center and had been of great assistance in helping with the parents of babies she has delivered.

d. Douglas Montgomery, M.D., wrote that he practices Maternal Fetal Medicine and OB/GYN, and joined Kaiser in 2005 as the Director of Maternal Fetal Medicine. He has worked with petitioner since that time. He wrote that petitioner consistently demonstrated an ability to clinically apply her excellent fund of medical knowledge and this has resulted in outstanding patient care. He wrote that she has sound medical judgment and is skilled at decision-making regarding complex medical problems. He indicated that he was consistently impressed with her clinical and teaching skills in her role as a mentor to nursing staff, residents and colleagues. Dr. Montgomery believed that petitioner was respected for her surgical skills.

8. Petitioner submitted numerous documents certifying completion of continuing medical education. She submitted results of the Kaiser patient satisfaction surveys that consistently showed she is rated above average. Petitioner submitted the Settlement Agreement she reached with the State of Hawaii that placed her on probation for a period of time to run concurrently with her California probation, and which required her to pay an administrative fine of \$1,500.00.

9. Petitioner testified at the hearing and described her practice as half obstetrics and half gynecology, and she works in labor and delivery, the operating room, and in the hospital. She also works in areas of quality assurance where they try to identify high-risk patients or cases for study.

Regarding X.J., petitioner testified that at the first visit, she did an intake, took a history, noted the patient's diabetes, and discussed her care. She noted the patient weighed 250 pounds and had been pregnant four times. Petitioner performed a transvaginal ultrasound and her interpretation was a small gestational sac that was irregular. Petitioner testified that the patient did not report fetal movements and in fact never reported fetal movements. Petitioner testified that the patient reported her periods were irregular and could not estimate how long she was pregnant. They estimated a five-week pregnancy. X.J.

returned in three weeks and petitioner did a follow-up examination with a transvaginal ultrasound. Petitioner testified she offered the patient a second opinion, but X.J. declined. Petitioner believed she had extensive experience with obese women. They discussed treatment options. At the third visit, petitioner testified the ultrasound disclosed a small gestational sac that was getting smaller and possibly collapsing, no yolk sac, and nothing to show the fetus was growing. Petitioner testified she offered to have a radiologist provide a second opinion but the patient declined. Petitioner also reviewed the lab findings and believed that she should have seen evidence of a fetus by then but did not. Instead, it appeared to petitioner to be a blighted ovum and a failed pregnancy. They decided to treat the pregnancy medically and petitioner prescribed a medication that would induce contractions.

Petitioner testified that she later learned that X.J. went to the emergency department and a child was born. Petitioner testified that she felt horrible for what happened and was very sorry. She called it a “horrible mistake” and one that she had never made before.

Petitioner testified that there were several factors that made this a challenging case, including the uncertainty of dates, the patients’ refusal to take hormones, her weight, and so forth.

Petitioner testified that as a result of this case, she has changed her practice, and now she is more conscientious with each patient, insists on second opinions in difficult cases, and assesses the entire uterus. She pointed out that ultrasound technology has improved in the eight years since the incident and she can now see the fetus better.

Petitioner reiterated that she completed the PACE program and the requisite ultrasound courses, as well as a course in advanced life support. She believed she was up to date on her training in the interpretation of ultrasounds and has attended all the available training courses offered in this field.

10. The Attorney General did not oppose the petition.

## LEGAL CONCLUSIONS

1. Petitioner established she was rehabilitated. She presented substantial evidence that she does not represent a threat to the public. She has the support of experienced physicians within the Kaiser system, and favorably impressed the faculty at PACE when she took the clinical training program at UCSD. She has taken all the ultrasound training courses that are available. Petitioner expressed remorse for what occurred and it appeared to be sincere. Petitioner has been on probation for about 30 months and no useful purpose would be served by requiring her to complete the remaining six months of probation imposed in the Disciplinary Order.

There is one aspect of this matter that is of some concern. Petitioner wrote in her

narrative and testified at the hearing that she made a horrible mistake when she diagnosed a failed pregnancy before the patient later delivered a healthy baby. Nevertheless, petitioner wrote at great length in her narrative and testified at the hearing that the information she had available to her reasonably justified her erroneous conclusion, or there were circumstances that made a correct diagnosis difficult to reach. She wrote that the conclusion that this was not a failed pregnancy could only be reached by viewing the facts “retrospectively” or “in retrospect.” While admitting that she made a mistake, it is not clear what petitioner is admitting she did wrong. The concern is that when confronted with a similar set of circumstances, petitioner might make the same mistake.

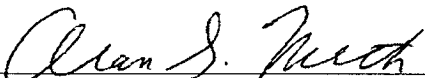
However, petitioner testified that she has changed the way she practices her specialty to avoid making the same mistake again. She now insists on second opinions in difficult cases and she has learned a great deal about ultrasounds. Her peers and the UCSD faculty administering the PACE program respected her knowledge base and judgment. It is concluded that this concern is not sufficient to justify denial of the petition in the face of other compelling evidence that justifies the granting of the petition.

2. Cause to grant the petition for termination of probation was established by reason of Factual Findings 5 through 10, and Legal Conclusion 1.

#### ORDER

The application of petitioner Roselie Ann Bauman, M.D, for termination of probation is granted. Probation shall terminate on the effective date of this decision.

DATED: July 10, 2014

  
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ALAN S. METH  
Administrative Law Judge  
Office of Administrative Hearings